

Message Text

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E.O. 11652: N/A

TAGS: EFIN, OECD

SUBJECT: PAYMENTS COMMITTEE DISCUSSION OF UN LINER CODE

1. SUMMARY: NOW THAT INVISIBLES COMMITTEE HAS COMPLETED ITS REPORT ON COMPATIBILITY BETWEEN UN LINER CONVENTION AND OECD INVISIBLES CODE, NEXT STAGE ON WAY TO COUNCIL WILL BE DISCUSSION IN PAYMENTS COMMITTEE (PC) ON DECEMBER 9. ACTION REQUESTED: DEPARTMENTS VIEWS ON PROPOSED DRAFT ENTRY IN COUNCIL MINUTES. END SUMMARY

2. WE HAVE PREPARED FOLLOWING DRAFT ENTRY FOR COUNCIL MINUTES AND HAVE SHOWN IT TO PC CHAIRMAN (WESTRATE OF NEW ZEALAND) AND SOME MEMBERS OF INVISIBLES COMMITTEE MAJORITY ON INFORMAL BASIS:

BEGIN QUOTE THE COUNCIL:

(L) NOTES THE REPORT OF THE COMMITTEE FOR INVISIBLE TRANSACTIONS ON THE COMPATIBILITY OF THE PROPOSED UN CONVENTION ON A CODE OF CONDUCT FOR LINER CONFERENCES AND THE OECD CODE OF LIBERALIZATION OF CURRENT INVISIBLE OPERATIONS.

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(2) FURTHER NOTES THAT ALTHOUGH A MAJORITY OF THE

COMMITTEE CONSIDERS THE LEGAL PROVISIONS OF THE UN CONVENTION TO BE INCOMPATIBLE WITH THE OECD CODE, A MINORITY DOES NOT ACCEPT THIS CONCLUSION; NEVERTHELESS, ALL MEMBERS OF THE COMMITTEE RECOGNIZE THAT IN THE IMPLEMENTATION OF THE CONVENTION THERE EXIST POSSIBILITIES OF CONFLICT WITH MEMBER COUNTRIES' OBLIGATIONS UNDER THE OECD CODE.

(3) INVITES THE UNITED NATIONS TO PROVIDE A CLARIFICATION OF THE UN CONVENTION WITH REGARD TO DIFFERENCES OF OPINION NOTED IN CHAPTER III OF THIS REPORT.

(4) INVITES MEMBER COUNTRIES TO GIVE CAREFUL CONSIDERATION TO THE ARGUMENTS PUT FORWARD IN THE COMMITTEE'S REPORT WHEN THEY CONSIDER ADHERENCE TO THE UN CONVENTION.

(5) DRAWS ATTENTION IN PARTICULAR TO REMEDIES PROPOSED BY THE COMMITTEE FOR AVOIDING OR RESOLVING ANY CONFLICTS WHICH MIGHT ARISE. END QUOTE

3. MISSION COMMENT: IN VIEW OF INVISIBLES COMMITTEE (IC) DECISION NOT TO INCLUDE EARLIER US VERSION OF DRAFT ENTRY IN THEIR REPORT (SEE SEPTTEL), IT MAY BE DIFFICULT TO OBTAIN AGREEMENT IN PC ON ABOVE PROPOSAL. EARLIER VERSION NOT ONLY CALLED FOR FURTHER CLARIFICATION BY UNITED NATIONS, BUT ALSO SUGGESTED THAT OECD MEMBER COUNTRIES NOT SIGN CONVENTION UNTIL SUCH CLARIFICATION OBTAINED. THERE IS CLEARLY NO HOPE OF GETTING AGREEMENT IN COUNCIL (WHERE UNANIMITY RULE APPLIES) ON RECOMMENDATION NOT TO SIGN, AND IN OUR VIEW THERE IS LITTLE CHANCE THAT POTENTIAL OECD SIGNATORIES OF CONVENTION WILL AGREE TO FURTHER INTERPRETATION BY UN. IN PC, HOWEVER, WE MIGHT OBTAIN AGREEMENT TO PUT FORWARD ABOVE DRAFT ENTRY AS ONE OF SEVERAL FOR COUNCIL'S CONSIDERATION.

4. ON QUESTION OF VENUE FOR FURTHER CLARIFICATION OF UN CONVENTION, DISCUSSION IN IC SEEMED SLIGHTLY MORE FAVORABLE TO EXAMINATION BY UN LEGAL OFFICE IN NEW YORK THAN TO INTERPRETATION BY UNCTAD OR UN'S MARITIME COMMITTEE. BRITISH ALSO INTERESTED IN POSSIBILITY OF AD HOC COMMITTEE OF LEGAL EXPERTS BEING CONVENED, PERHAPS UNDER OECD AUSPICES, TO TRY AND RESOLVE OUTSTANDING DIFFERENCES OF INTERPRETATION.

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5. ACTION REQUESTED: WE WOULD APPRECIATE DEPARTMENT'S COMMENTS ON DRAFT ENTRY AND OTHER POINTS RAISED ABOVE IN SUFFICIENT TIME FOR COORDINATION OF "MAJORITY TACTICS" AT DECEMBER 9 MEETING OF PC.
TURNER

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